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EXAMINER

PRONE, JASON D

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/750,244
Filing Date: December 31, 2003
Appellant(s): MACOVE, JAMES A.

Ronald E. Cahill
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 25 November 2008 appealing from the Office action mailed 27 November 2007.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claim 41 appears on page 28 of the Appendix to the appellant's brief. The minor errors are as follows: on 24 November 2008, an amendment to the claims amending claim 41 to overcome the 35 U.S.C. 112, second paragraph was submitted. However, the claim appendix does not incorporate

this amendment to claim 41. It is noted that this discrepancy does not effect the art rejection.

(8) Evidence Relied Upon

6,276,061	ROZENKRANC	8-2001
WO 94/26476	GERASIMOV et al.	11-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: (it is noted that the Appendix A relied on in the rejection is provided after the listing of rejections)

- Claims 40-44 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to claim 41 line 18, the phrase “the second blade group further includes a blade platform” is unclear. It is uncertain if this blade platform is the same structure previously disclosed on lines 11-12 or if it is another blade platform.
- Claims 41-44 stand rejected under 35 U.S.C. 102(b) as anticipated by Rozenkranc (6,276,061). See Appendix A for examiner added reference labels.

In regards to claim 41, Rozenkranc discloses the same invention including a razor system providing both broad area shaving and trim shaving blade groups within a single cartridge (2), an elongate handle defining a handle axis (1), the razor cartridge disposed on the handle (Fig. 2) having a first blade group having a plurality of blades configured to provide a broad area shaving in a first working plane (3), the first plane

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being defined by a blade platform having leading and trailing glide surfaces (1wp extends from 5 to 6), the first working plane intersects the handle axis (Fig. 2) and the plurality of razor blades being provided at an acute angle to the first working plane (3 and 1wp), a second blade group having at least one razor blade (4) configured to provide trim shaving in a second work plane (2wp), the second working plane being defined by a blade platform having leading (400) and trailing surfaces (401), the second working plane intersects the handle axis (Fig. 2a) and the at least one razor blade being provided at an acute angle to the second working plane (4 and U), the first and second working planes intersect each other so as to define a line of intersection that is substantially transverse to the handle axis (Fig. 2), the first and second working planes intersect at an included angle between about 0° and 150° (1wp and 2wp clearly form an angle that is greater than 0° and less than 90° , also see page 13 of applicant's remarks in the most recent response), the second blade group includes a blade platform (400 extending to 401) and a leading-edge blade guard (400a), and the leading-edge blade guard having a thin profile to allow a distance between the at least one razorblade and the skin to be optimally minimized (TP)

In regards to claim 42, Rozenkranc discloses the first and second working planes are configured to allow conversion by a user from broad area shaving to trim shaving by rotating the handle 180° about the handle axis (Figs. 2a and 3a).

In regards to claim 43, Rozenkranc discloses wherein at least a portion of the handle is symmetric to facilitate handling of the handle for either broad area shaving or trim shaving (Figs. 2 and 3).

In regards to claim 44, Rozenkranc discloses the handle is elongated and has a curve at an end attached to the razor cartridge (1) and the curve being concave on the same side as the first blade group (Fig. 2).

- Claims 21, 22, 24-27, 30-32, and 40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rozenkranc with evidence reference WO 94/26476. See Appendix A for examiner added reference labels.

In regards to claim 21, Rozenkranc discloses the invention including a razor cartridge (2) for use with a handle (1), the razor cartridge defines a handle axis (Fig. 2), a first blade group provided on the razor cartridge and having a plurality of blades (3) configured to provide a broad area shaving in a first working plane (1wp), the first plane being defined by a blade platform having leading and trailing glide surfaces (1wp extends from 5 to 6), the first working plane intersects the handle axis (Fig. 2) and the plurality of blades in the first blade group are angled at an acute angle with respect to the first working plane (3 and 1wp), a second blade group provided on the razor cartridge and having at least one razor blade (4) configured to provide trim shaving in a second work plane (2wp), the second working plane being defined by a blade platform having leading (400) and trailing surfaces (401), the second working plane intersects the handle axis (Fig. 2a) and the at least one razor blade in the second group is angled at an acute angle with respect to the second working plane (4 and 2wp), and the first and second working planes intersect each other so as to define a line of intersection that is substantially transverse to the handle axis (Fig. 2).

In regards to claim 22, Rozenkranc discloses the blades in the first group are parallel to each other (3).

In regards to claim 24, Rozenkranc discloses the line of intersection is orthogonal to the handle axis (Fig. 2).

In regards to claim 25, Rozenkranc discloses the handle is attached to the razor cartridge (1) and at least a portion of the handle extending along the handle axis (1).

In regards to claim 26, Rozenkranc discloses the first and second working planes are configured to allow conversion by a user from broad area shaving to trim shaving by rotating the handle 180° about the handle axis (Figs. 2a and 3a).

In regards to claim 27, Rozenkranc discloses wherein at least a portion of the handle is symmetric to facilitate handling of the handle for either broad area shaving or trim shaving (Figs. 2 and 3).

In regards to claim 30, Rozenkranc discloses the handle is elongated and has a curve at an end attached to the razor cartridge (1) and the curve being concave on the same side as the first blade group (Fig. 2).

In regards to claims 31 and 32, Rozenkranc discloses the secondary blade group has a leading-edge blade guard having a thin profile to allow a distance between the cutting blade and the skin (51) and the secondary blade group has a single razor blade (4).

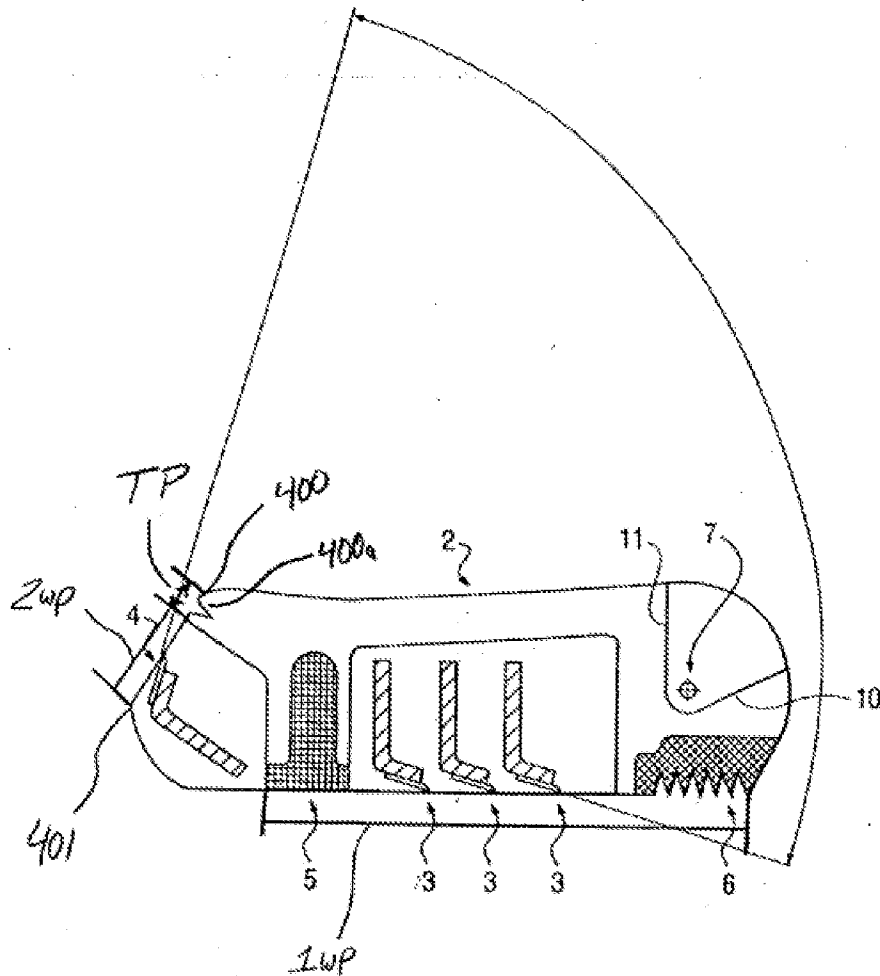
However, in regards to claims 21 and 40, Rozenkranc remains silent with respect to the first and second working planes intersect at an angle between about 75° and 135°. WO 94/26476 provides evidence that it is old and well known in the art of double

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sided razor cartridges to alter the intersection angle between the two working planes (Figs. 5A, 5B, and 6).

In light of WO 94/26476, Rozenkranc does not disclose the first and second working planes intersect at an angle between about 75° and 135° but it would have been obvious to one having ordinary skill in the art at the time the invention was made to intersect the plane angles at an angle between about 75° and 135°, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. It is noted that there are a limited number of angles available to a person skilled in the art for the working plane intersection angle and it would have been obvious to one of ordinary skill in the art to have experimented to as shown by WO 94/26476 to increase this working plane intersection angle. It is not inventive to discover the optimum or workable ranges by routine experimentation. Therefore, it would have been an obvious to one of ordinary skill in the art to have modified the device of Rozenkranc to obtain the specified angle. The claim would have been obvious because a person of ordinary skill has good reason to pursue the known options within technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense.

Appendix A



(10) Response to Argument

For clarity, it is noted that the arguments pertaining to the 35 U.S.C. 103(a) rejection start on page 8 and are labeled under the item “B” and the arguments pertaining to the 35 U.S.C. 102(b) start on page 20 under the item “C”. The examiner will utilize these letters with their sub-indicators (1, 2, 3, etc.) to indicate which argument is being addressed.

With regards to arguments B1-B3, the examiner's use of Rozenkranc in view of WO 94/26476 with *In re Aller*, 105 USPQ 233 is correctly used. Rozenkranc disclose first and second working planes with a plane angle however, fails to disclose the plane angle between the working planes (as illustrated on appellant's page 8) is within the range of between about 75°-135°. The examiner then applied WO 94/26476 Figures 5A, 5B, and 6 to show that it is old and well known for double sided razors featuring two working planes to permanently alter the angle of the working planes in the different embodiments. The two sets of dotted lines in Figures 5A, 5B, and 6, clearly represent two working planes. WO 94/26476 Figures 5A, 5B, and 6 is not used to teach any type of structure, only the fact that it is old and well known and well within one's technical grasp for alternate embodiments of the same razor to have different plane angles. Next and in light of WO 94/26476's teachings, *In re Aller* was applied, in that, discovering the optimum or workable ranges involves only routine skill in the art. Basically, it would have been obvious to one of ordinary skill to have made the plane angle, of Rozenkranc, larger or smaller to better perform a specific intended use on a specific unique work piece. Also, Rozenkranc discloses the angle between the blades in the form of the range 60°-120°. This means it would have been obvious to one skilled in the art to have constructed this apparatus with a blade angle of 120°. It is also pointed out that one skilled in the art we recognize that the blade angle would change to 120° but the individual blade angles relative to their respective working planes would remain the same. It is understood, the examiner can not use the exact dimensions shown in the Figures of Rozenkranc because it is not disclosed as drawn to scale but for example

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purposes only it can be said that the angle between the blades is roughly 90° and, using the Figure on applicant's page 8, the plane angle is roughly 60° . If one was to construct the apparatus using the 120° blade angle this would add 30° to the 90° blade angle and, since the blade angle relative to the planes would not change, also add 30° to the plane angle which would then be within the claimed range. Basically, in light of the blades angle range, the teaching that the changing of working plane angles in different embodiments of the same double sided razor is old and well known, and the fact that discovering the optimum or workable ranges involves only routine skill in the art, it would have been obvious to one of ordinary skill in the art to have provided Rozenkranc with a plane angle within the claimed range.

With regards to arguments B4, the examiner's interpretation of Rozenkranc is correct. Rozenkranc discloses a handle that is curved at its end attached to the razor with the curve being concave on the same side as the first blade group (using Figure 2, the bottom concave curve). However, the end attached to the razor also has a concave curve on the same side as the second blade group. Therefore, in light of appellant's *adjacent* placement of their concave curve relative to the terminal end of the attachment end of the handle, the interpretation of Rozenkranc's handle having a curve being concave on the same side as the first blade group on the attachment end is appropriate.

With regards to argument B5, the examiner's interpretation of the term thin profile is correct. The claim limitation is that "the secondary blade group has a leading-edge blade guard having a thin profile". Using Appendix A, Rozenkranc discloses the secondary blade group (4) has a leading-edge blade guard (400a) having a thin profile

(TP). The portion 400a is the portion being considered the leading-edge blade guard.

The first half of the second working plane is made of the leading-edge blade guard and a space gap. The space gap could not be considered part of the guard because it is not made up of any structure and could not perform a guarding function. Only item 400a can be considered the guard and it is clearly of a thin profile. The term "thin" is a relative term which requires a comparison to dictate the perimeters of what is considered thin. In this case item 400a is clearly thinner than the guard portion preceding the first blade group. In the comparison of both lead edge guard portion, item 400a is clearly the thinner guard and could be considered thin. Also, for example, both of the guard portions could be considered thin when compared to a razor with larger guards. Appellant is arguing that the lead edge blade guard of the instant application is thinner than the guard 400a of Rozenkranc and therefore guard 400a cannot be thin. However, there are no specifics disclosed in the application with regards to actual dimension of what thin is considered. Even when comparing Figures 3 and 4 of the instant application, the distance between blade 62 and guard 58 appears to differ. Basically, appellant is arguing that since guard 400a is not allegedly as thin as guard 58 that it cannot be considered thin, however more than one item can be considered thin at the same time. For example, two people (adult A weighs 100 lbs and adult B weight 110) can be both considered skinny or thin even though one is not as thin as the other person. Using appellant's logic, only one of the people can be called skinny or thin and that is not the case. Also, using appellant's logic, if a razor blade with a thinner guard than the one of the instant application is presented, is the guard 58 no longer thin?

With regards to argument C1, the examiner's interpretation of the term thin profile is correct. Appellant argues that the leading-edge blade guard must have a thin profile as within the second blade group. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the leading-edge blade guard must have a thin profile as within the second blade group) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The limitation is "the leading-blade edge having a thin profile". There is no comparison with regards to the rest of the second blade group anywhere in the claim. However, with regards to Appendix A, the leading-blade edge 400a does have a thin profile TP when compared to the rest of the working blade. Basically TP is thinner than the distance from 401 to the inner edge of 400a. Therefore, guard 400a does have a thin profile within the second blade group.

With regards to argument D, the examiner maintains this rejection due to the fact that line 18 of claim 41 of the claim appendix discloses the phrase "the second blade group further includes a blade platform". It is uncertain if this blade platform is the same structure previously disclosed on lines 11-12 or if it is another blade platform. However, it is noted that on 24 November, appellant submitted an amendment to claim 41 that overcame this rejection.

In conclusion, the rejections to Rozenkranc and Rozenkranc in view WO 94/26476 have been properly applied.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jason Daniel Prone/

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